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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,398	09/16/2004	Alexander P. RIGOPULOS	HXT-007	5397

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EXAMINER	
HSU, RYAN	

ART UNIT	PAPER NUMBER
3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/711,398	RIGOPULOS, ALEXANDER P.	
	Examiner	Art Unit	
	Ryan Hsu	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 September 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 September 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *3/30/05;4/25/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A claimed invention must produce a "useful, concrete, and tangible result". However, although claims 1-10 are directed towards a useful and concrete matter, they lack in disclosing a tangible result. Instead the limitations point to describing several processes and embodiments with which the method could be initiated. The claims contain limitations such as "selecting a quantum of music content", "creating a video game based on selected music content", and "offering for sale the created video game in a manner typically associated with music product" but fails to create a tangible result. The method proposed has not produced a real world result and only recites a series of processes for a game program and selling of a game program and fails to provide a means of producing a useful result or a mention of a tangible medium in order to enable its functionality to be realized. *See MPEP 2106-regarding patentable subject matter with computer-related inventions.*

With regard to claims 27-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A claimed invention must produce a "useful, concrete, and tangible result". However claims 27-32 are directed towards the offering for sale of a video game or product placement or packaging of the game similar to that of recorded music products. Although helpful for the sale of video games these limitations produce no tangible real world result and simply recite a series of ideas and processes for the selling of a

game program. They fail to provide producing a useful result or a mention of a tangible medium in order to enable its functionality to be realized. *See MPEP 2106-regarding patentable subject matter with computer-related inventions.*

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1-6, 19-21, and 27-32, is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For example the offering for sale in a "manner typically associated with recorded music products" fails to particularly point out the invention. The manner with which recorded music products are constantly changing, retailers and businesses are constantly thinking of innovative ways with which to deliver products to consumers. Specifically in the music products, over the last few decades these products were relegated only to specialty stores (*ie: music or record stores*) but have since been found to be sold in electronic stores. More recently retailers have now begun to operate virtual stores via the Internet. The offering of sale of products in the music industry and consumer products industry is constantly changing which fails to limit the claims and therefore the limitation has been deemed indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Chien ("Review: Dance Dance Revolution").

Regarding claim 1, Dance Dance Revolution, herein referred to as DDR, discloses a method for selling a music-based video game, the method comprising the steps of (a) selecting a quantum of music content; (b) creating a video game based on the selected music content; and (c) offering the sale the created video game in a manner typically associated with recorded music products (*see Chien "Dance Dance Revolution"*).

Regarding claims 8 and 10, DDR discloses a video game based on the selected music content in which user input is received via a floor pad or game controller (*see Chien "Dance Dance Revolution*).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by (US 6,352,432 B1).

Regarding claim 1, Tsai et al. disclose a method and system for a music-based video game comprising steps of: (a) a user selecting from quantum of music content (*see "input music-piece number" [s1] of Fig. 4 and the related description thereof*); (b) creating a video game based on the selected music content (*ie: the selected song by user*) (*see Fig. 12(a-b) and the related description thereof*); and (c) offering for sale the created video game in a manner typically associated with recorded music products.

Claims 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith ("Dance Dance Revolution").

Regarding claim 24, Smith discloses a game called Dance Dance Revolution, herein referred to as DDR. DDR disclose a method for creating an interactive music video for a musical composition performed by a real world musical artists (*ie: the player*), comprising the steps of: (a) creating a computer-generated rendition of the musical artists (*see 'gameplay' of Smith*); and (b) creating a video game based on the musical composition that receives input from a player and includes the created computer-generated rendition of the musical artists as a game element with which the player interacts (*ie: player performs beat of music via controls to complete the stage*) (*see 'gameplay' of Smith*).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-6, 19-23, and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith ("Dance Dance Revolution").

Regarding claims 2-6, Smith teaches of a video game that uses selected music content by the user in creating a music-based video game. This series is commonly known in the art as part of the "Bemani" (*see Gertsmann "DrumMania(Import) for definition of Bemani-series*") genre. The genre incorporates such video games as rhythm action video games (*see Perry*

"Amplitude"), singing video games (*see Davis "Karaoke Revolution"*, dancing video games (*see Davis, "Dance Dance Revolution"*), shooting games (*see "Rez"*), and character action games (*see Davis, "VibRibbon"*). Davis discloses the claimed invention except that it only incorporates a dancing video game instead of showing a rhythm, singing, shooting, and character action game. However as previously stated the references cited above teach that these are old and well known embodiments of the "Bemani" game genre and were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute any of the following types for the other.

Claims 19-21, 23 and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith as applied to claims above, and further in view of "Dance Dance Revolution (www.ebgames.com)".

Regarding claims 19-21, 23 and 27-32, DDR teaches a video game that comprises of a quantum of music content where the game is created based on the selected music content and is offered for sale to the consumer in a manner typically associated with a recorded music product. However DDR is silent about the specific implementation to offer the game program for sale with regard to such limitations such as packaging, marketing, and indicia placed on the cover of the game package. In the applicant's cited prior art, DDR via **www.ebgames.com** is a game that is sold online along side other games and at other retailers such as **www.amazon.com** or www.iTunes.com. Video games are now commonly sound in places online or alongside music and movies.

Regarding claims 19-20, DDR is a video game to be offered for sale as a single unit a single article of manufacture including the selected music content and the created video game in a manner typically associated with a recorded music product (*ie: the game program is packaged and sold as a CD/DVD*) (*see DDR via www.ebgames.com*).

Regarding claim 21, DDR is a video game to be offered for sale as a single unit or article of manufacture including the selected music content and the created video game in proximity to one another within a retail store in a manner typically associated with a recorded music product (*ie: video game alongside a comparable music product*) (*see DDR via www.ebgames.com*).

Regarding claim 23, DDR is a video game to comprise of making a selected music content available for sale exclusively through the created video game (*ie: the song stages of DDR may only be purchased through buying the game program*).

Regarding claim 27, DDR is a video game to be offered for sale through a distribution channel typically associated with recorded music products (*ie: Bestbuy, Circuit City and several other retailers sell video games alongside musical CD's*) (*see DDR via www.ebgames.com*).

Regarding claim 28, DDR is a video game to be offered for sale a created video game using product placement typically associated with a recorded music product (*see DDR via www.ebgames.com*).

Regarding claim 29, DDR is a video game to bear indicia on packaging typically associated with recorded music products (*ie: **www.esrb.org** ratings system*) (*see DDR via www.ebgames.com*).

Regarding claim 30-32, DDR is a video game to offer for sale the created video game at a price, advertising the created video game, and position the created video game, through language

use on one of packaging and advertising, in a manner typically associated with recorded music product (*see DDR via* ***www.ebgames.com***).

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith as applied to claims above, and further in view of "PopCap Games Site Review".

Regarding claim 22, DDR teaches a video game that comprises of a quantum of music content where the game is created based on the selected music content and is offered for sale to the consumer in a manner typically associated with a recorded music product. However DDR is silent about the specific implementation to offer the game program for sale with regard to such limitations such as being made available for download from a single location.

PopCap Games site Review teaches that it is old and well known in the gaming arts for a video game to be made available for download from a single location the selected music content and the created video game (*ie: Napster, iTunes, Sony's Connect*) (*see PopCap Games Site Review*).

Claims 11-15, 17-18, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith ("Dance Dance Revolution") as applied to claims above, and further in view of Davis ("Frequency").

Regarding claims 11-15, 17-18, and 25-26, Perry teaches the method of creating a video game that uses a computer-generated element to represent the musical artists with which a player interacts. Smith teaches of a video game that is commonly known in the art as a "Bemani game" or music-based video games. Additionally, Smith teaches the use of a musical time interface

with the user on the display which leads to the computer generated rendition of the musical artists. However, although Dance Dance Revolution teaches of a musical time interface with the user it is silent with regards to a video game based on the musical composition in which a musical time axis is represented as a spatial path.

In an analogous "Bemani game" in the gaming arts, Davis teaches about the game known as "Frequency". Frequency teaches the use of a spatial path to interface with a user instead of a musical time path. Davis teaches the variation of displaying the interface as a spatial path as opposed to the standard music-time path as taught by the majority of "Bemani" games. Davis teaches that one would be motivated to incorporate a spatial path interface display to over a more visually polished and faux futuristic look to the "Bemani" game type. Therefore it would have been obvious at the time the invention was made to incorporate the spatial interface into the game taught by Smith to offer a computer-generated element interacting with a player using a spatial interface technique.

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai et al. as applied to claims above, and further in view of Kumar et al. (US 6,514,083 B1).

Regarding claims 7 and 9, Tsai et al. teach a video game based on the selected music content in which the user input is received via a microphone (*see microphone [20] of Fig. 7 and the related description thereof*). However, Tsai is silent with regards to implementing a user input received via a camera.

In an analogous karaoke system, Kumar et al. teaches the implementation of a camera producing a series of video frames including at least one performer and a karaoke processor

system providing a video environment for the karaoke performer. Kumar teaches the ability to extract images from the camera to be placed into the virtual environment of the karaoke video display (*see abstract*). Kumar teaches that one would be motivated to incorporate this element into a standard karaoke system to further enhance the "interactive participation of karaoke customers with their karaoke experience" (*see col. 2: ln 33-35*). Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to incorporate the camera of Kumar with the music-based game of Tsai to create a more realistic karaoke experience.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Takase et al. (US 6,450,888 B1) – Game System and Program (Dance Dance Revolution specification).

Suzuki et al. (US 6,227,968 B1) – Dance Game Apparatus and Step-On based for Dance Game.

Nobi et al. (US 6,786,821 B2) – Game Machine, Game Processing Method and Information Storage Medium.

Kim et al. (US 6,554,706 B2) – Methods and Apparatus of Displaying and Evaluating Motion Data In a Motion Game Apparatus.

Any inquiry concerning this communication or earlier communication from the examiner should be direct to Ryan Hsu whose telephone number is (571)-272-7148. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Jones can be reached at (571)-272-4438.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, contact the Electronic Business Center (EBC) at 1-866-217-9197 (toll-free).

RH

March 1, 2006

JOHN M. HOTALING, II
PRIMARY EXAMINER